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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Butte)

In re O. C., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

O. C.,

Defendant and Appellant.

C051236

(Super. Ct. No.
J26987)

O. C. (the minor) appeals from the juvenile court's denial of his motion to modify his sentence. On appeal, the minor asserts the juvenile court erred when it refused to grant him a continuance to seek retained counsel. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Following a contested jurisdictional hearing, the juvenile court sustained charges against the minor of resisting an officer (Pen. Code, § 69), criminal threats (Pen. Code, § 422), assault upon an officer (Pen. Code, § 245, subd. (c)), and vandalism causing less than \$400 in damage (Pen. Code, § 594, subd. (a)). The minor was committed to the California Youth Authority for a maximum confinement of seven years and 10 months.

The minor appealed, and we held that the juvenile court violated Welfare and Institutions Code section 702 by not specifying whether the resisting an officer and criminal threats offenses were felonies or misdemeanors. (*People v. O.C.* (Feb. 18, 2005 C045464) [nonpub. opn. (O.C.)]; see *In re Manzy W.* (1997) 14 Cal.4th 1199, 1204.) We remanded the case to the juvenile court to determine whether the two offenses were misdemeanors or felonies, and to recalculate the minor's maximum period of confinement, if necessary. (*O.C., supra.*)

On May 11, 2005, the court determined that both offenses were felonies and reinstated the original maximum term. The minor did not personally appear, but was represented by counsel.

On July 15, 2005, the minor filed an in propria persona motion for modification of the sentence. The juvenile court heard argument on the motion on September 14, 2005. At the hearing, the minor asked for a continuance to "be permitted to

hire outside counsel," which the court denied. The juvenile court also denied the motion to modify the sentence.

DISCUSSION

The minor contends the juvenile court's denial of his request for a continuance to find substitute counsel violated his Sixth Amendment right to counsel and his right to due process. In light of the significant consequences of the felony designations, the minor argues he was entitled to counsel of his choice when contesting the designations.

A minor's right to counsel in delinquency proceedings is guaranteed by due process and statute rather than the Sixth Amendment. (See *In re William F.* (1974) 11 Cal.3d 249, 254, disapproved on another ground in *People v. Bonin* (1988) 46 Cal.3d 659, 695, fn. 4; Welf. & Inst. Code, § 679.) This right "is not necessarily as broad as the right to counsel in criminal proceedings." (*In re William F.*, *supra*, at p. 254.) It is not necessary for us to determine whether the right to choose counsel is more restricted in delinquency proceedings because the minor's claim fails under the Sixth Amendment standard.

The right to counsel in criminal cases "encompasses the right to retain counsel of one's own choosing." (*People v. Holland* (1978) 23 Cal.3d 77, 86, disapproved on another ground by *People v. Mendez* (1999) 19 Cal.4th 1084, 1097, fn. 7, 1098, fn. 9.) Trial courts should "make all reasonable efforts to

ensure that a defendant financially able to retain an attorney of his own choosing can be represented by that attorney." (*People v. Crovedi* (1966) 65 Cal.2d 199, 207.) A defendant's desire to defend himself in whatever manner he deems best "can constitutionally be forced to yield only when it will result in significant prejudice to the defendant himself or in a disruption of the orderly processes of justice unreasonable under the circumstances of the particular case." (*Id.* at p. 208.)

Granting a request for continuance to seek private counsel is within the trial court's discretion. (*People v. Courts* (1985) 37 Cal.3d 784, 790 (*Courts*).) "Once a continuance has been denied, the burden is on appellant to establish an abuse of discretion." (*People v. Strozier* (1993) 20 Cal.App.4th 55, 60.) "In deciding whether the denial of a continuance was so arbitrary as to violate due process, the reviewing court looks to the circumstances of each case, "particularly in the reasons presented to the trial judge at the time the request [was] denied."" (*Courts, supra*, 37 Cal.3d at p. 791, quoting *Ungar v. Sarafite* (1964) 376 U.S. 575, 589 [11 L.Ed.2d 921, 931].)

In *Courts*, our Supreme Court reversed defendant's conviction because the trial court denied his request for a continuance in spite of a "good faith, diligent effort to obtain the substitution of counsel before the scheduled trial date." (*Courts, supra*, 37 Cal.3d at p. 791.) Defendant contacted counsel almost two months before the trial to discuss

representation and the fee. (*Ibid.*) He asked for a continuance eight days before the trial which the trial court denied. (*Id.* at pp. 787-788.) Defendant was able to retain counsel before the trial date, but his efforts to obtain a continuance were rebuffed by the trial court. (*Id.* at pp. 788-789.)

A continuance to substitute retained counsel is properly denied "if the accused is 'unjustifiably dilatory' in obtaining counsel, or 'if he arbitrarily chooses to substitute counsel at the time of trial.' [Citation]." (*Courts, supra*, 37 Cal.3d at pp. 790-791.) The minor requested the continuance on the day of his hearing, and gave no excuse for the delay. "Where a continuance is requested on the day of trial, the lateness of the request may be a significant factor justifying denial absent compelling circumstances to the contrary." (*People v. Jeffers* (1987) 188 Cal.App.3d 840, 850.)

The minor claims he was not late because his incarceration in the Youth Authority prevented him from obtaining counsel before the hearing. This is no excuse, since the minor never asked for a release from the Youth Authority along with his continuance. His inability to find counsel before the hearing is not a compelling circumstance which excuses the lateness of the requested continuance.

The good faith, reasonable effort to obtain counsel in *Courts* must "be sharply contrasted with cases which have upheld the denial of a continuance on the ground that participation by a particular private attorney was still quite speculative at the

time the motion for continuance was made." (*Courts, supra*, 37 Cal.3d at p. 791, fn. 3.) The record is devoid of any "reasonable and timely steps to create a relationship with private counsel." (*Id.* at p. 794.) A court does not abuse its discretion by denying the last minute request for continuance where the party has not even attempted to retain counsel. (*People v. Pigage* (2003) 112 Cal.App.4th 1359, 1367.)

The juvenile court sought a "very specific offer as to what outside counsel would accomplish and what the continuance would accomplish." The minor never responded to the juvenile court's demand. The closest the minor comes to supporting his motion for continuance is his own request: "I can't get a little time to talk to a lawyer in this county?"

A continuance is supposed to be requested in writing at least two days before any delinquency proceeding. (Welf. & Inst. Code, § 682, subd. (a).) The moving party is required to establish good cause for the continuance. (Welf. & Inst. Code, § 682, subd. (b).) A party that does not comply with subdivision (a)'s notice requirements must provide "good cause for failure to comply with those requirements" (Welf. & Inst. Code, § 682, subd. (c).) Failure to provide good cause for the delay justifies denying a motion for continuance. (Welf. & Inst. Code, § 682, subd. (c).) It was not an abuse of discretion for the juvenile court to deny the minor's last-minute, unsupported motion for continuance.

"The right of a defendant to appear and defend with counsel of his own choice is not absolute but must be carefully weighed against other values of substantial importance such as those seeking ``the orderly and expeditious functioning of judicial administration.' [Citation.]" (*People v. Rhines* (1982) 131 Cal.App.3d 498, 506.) The juvenile court did not violate due process by denying the minor's unreasonable request for a continuance.

DISPOSITION

The judgment is affirmed.

BLEASE, Acting P. J.

We concur:

MORRISON, J.

ROBIE, J.